

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person to Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:4

PLR-121703-19

Date:

March 17, 2020

## Legend

Corporation X =

Corporation X Sub 1 =

Corporation X Sub 2 =

Sub 4 =

Sub 5

Corporation Y =

Date 1 =

Date 2 =

Date 3 =

Controlled =  
Accelerated Share  
Repurchase Program

Pension Plans =

Pension Plan Amount =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear :

This letter responds to your authorized representatives' letter dated September 13, 2019, as supplemented by additional submissions dated November 19, 2019, November 26, 2019, February 10, 2020 and February 26, 2020 requesting that we supplement the private letter ruling dated May 13, 2019 (PLR-133731-18) (the "Prior Ruling Letter"). The information provided in the request for the Prior Ruling Letter and

the subsequent letter and correspondence is summarized below. Capitalized terms not defined in this letter have the meanings assigned to them in the Prior Ruling Letter.

This letter is issued pursuant to sections 3.05 and 4 of Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more “Covered Transactions” under section 355 and/or section 368 of the Internal Revenue Code (the “Code”), section 6.03(2) of Rev. Proc. 2019-1, 2019-1 I.R.B. 1, regarding one or more significant issues under section 355 and/or section 368 of the Code, and section 3.01(58) of Rev. Proc. 2019-3, 2019-1 I.R.B. 130, with respect to a significant issue under section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d) pertaining to a device. This office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **SUPPLEMENTAL FACTS**

After the receipt of the Prior Ruling Letter, Distributing commenced negotiations with Corporation X, a Country A corporation, regarding a potential transaction in which Corporation X would combine with Controlled after the Distribution. Corporation X is the parent of a worldwide group of entities (the “Corporation X Worldwide Group”).

On Date 1, Distributing, Controlled, Corporation X and certain of their subsidiaries entered into definitive agreements for a business combination transaction pursuant to which, subject to certain terms and conditions, (i) Distributing will transfer Business B to Controlled, (ii) Distributing will distribute to its shareholders all of the issued and outstanding shares of Controlled common stock held by Distributing by way of either (at Distributing’s option) a Regular Spin or a Split-Off and, if necessary, a Clean-Up Spin, and (iii) immediately following such distribution, Controlled and Corporation X will engage in a strategic business combination transaction described below.

The closing of the Combination (as defined below) is conditioned on, among other things, the receipt by Distributing of a private letter ruling to the effect that the Combination will not adversely affect Distributing’s ability to rely upon the rulings granted in the Prior Ruling Letter.

Immediately prior to the Proposed Transactions, Controlled will wholly own Sub 4, a State A corporation. Sub 4 will wholly own Sub 5, a State A corporation. Corporation X will wholly own Corporation X Sub 1, a Country A corporation. Corporation X Sub 1 will wholly own Corporation X Sub 2, a Country A corporation.

On Date 2, in a transaction unrelated to the Contribution and the Distribution (the “Separation”) and the Combination, Distributing entered into an agreement to acquire all of the stock of Corporation Y, a publicly traded corporation, subject to the terms and conditions of the agreement, for a specified amount of cash. Distributing closed the acquisition of Corporation Y on Date 3. To finance the acquisition of Corporation Y, Distributing issued commercial paper between Date 2 and Date 3 (such commercial paper (or commercial paper incurred, directly or indirectly, to refinance the original issuance of commercial paper) that is outstanding as of the Distribution, the “Specified Distributing Debt”).

### **Proposed Transaction**

The steps of the Proposed Transaction, as modified by the business combination transaction, are set forth below. Distributing will not undertake either of the First IPO or the Second IPO described in the Prior Ruling Letter.

- (i) Controlled will incur third-party debt financing through a combination of bonds and/or term loans (the “Controlled Debt” and the proceeds from the Controlled Debt, the “Initial Cash Proceeds”). It is expected that the Controlled Debt will be guaranteed by Distributing, but any Distributing guarantees will terminate no later than the completion of the Distribution.
- (ii) Distributing will transfer the stock and/or membership interests of Sub 1, Sub 2 and LLC 1 and possibly cash (the “Contribution Assets”) to Controlled in exchange for (i) Controlled common shares, (ii) the Initial Cash Proceeds and (iii) the assumption by Controlled of certain liabilities of Distributing that are related to Business B. Immediately after the completion of this step, Distributing will own all of the outstanding stock of Controlled. Pending the use of the Initial Cash Proceeds as described in Step (vii) below, the Initial Cash Proceeds will be held by Distributing in a segregated bank account.
- (iii) Immediately after the Contribution, Distributing will effect the Distribution.
- (iv) Immediately after the Distribution, Corporation X will merge with and into Corporation X Sub 2, with Corporation X Sub 2 surviving as a wholly owned subsidiary of Corporation X Sub 1 (the “Corporation X Merger”). Each holder of shares of Corporation X will receive, in exchange for each Corporation X ordinary share, a shares of stock in Corporation X Sub 1.
- (v) Immediately after the completion of the Corporation X Merger, Sub 5 or its nominee will acquire all of the shares of Corporation X Sub 2 from Corporation X Sub 1 in exchange for an exchangeable note (the “Exchangeable Note”) issued by Sub 5 (the “Share Sale”). The

Exchangeable Note is mandatorily convertible into a number of shares of Controlled common stock on the liquidation of Corporation X Sub 1.

- (vi) As soon as practicable after the completion of the Share Sale, Corporation X Sub 1 will distribute the Exchangeable Note to its shareholders in a liquidating distribution. Immediately upon such liquidating distribution, the Exchangeable Note will, pursuant to its terms, be automatically and mandatorily exchanged for shares of Controlled common stock delivered by Sub 5, such that each shareholder of Corporation X Sub 1 will receive b shares of Controlled common stock for each share of Corporation X Sub 1 stock, subject to applicable withholding taxes, if any (together with transactions described in Steps (v) and (vi), the “Combination”).

Under Country A law, the Corporation X Merger must occur within a specified period of time after the required documents in connection with the Corporation X Merger have been deposited or disclosed for public inspection in accordance with Country A law. If the Corporation X Merger is not completed within this time period, then, unless otherwise agreed by Distributing, Controlled and Corporation X, the structure of the Combination will change such that Corporation X will sell all of its assets and liabilities to Sub 5 in exchange for the Exchangeable Note, followed by the liquidation of Corporation X and the automatic conversion of the Exchangeable Note into shares of Controlled common stock on the same terms described above.

In connection with the Combination, Distributing and Controlled will enter into certain continuing commercial and transitional agreements and arrangements, which were negotiated between Distributing and Corporation X.

- (vii) With respect to the Initial Cash Proceeds, by no later than c days after the distribution of Controlled common stock in the Distribution, and, with respect to the Post-Closing Cash Proceeds (as defined below), within d days after the receipt of any such Post-Closing Cash Proceeds and except as described in the next sentence, Distributing will (i) use some or all of the Initial Cash Proceeds and the Post-Closing Cash Proceeds to (A) repurchase Distributing common stock, including potentially through an Accelerated Share Repurchase Program, and/or (B) make *pro rata* special cash distributions to its shareholders, and (ii) use the remaining Initial Cash Proceeds and Post-Closing Cash Proceeds to (A) repay or repurchase debt (including principal, interest and associated premiums and fees) held by third-party lenders, and (B) make contributions to one or both of the Pension Plans in amounts not exceeding the Pension Plan Amount with respect to that Pension Plan (all such uses of the Initial Cash

Proceeds and the Post-Closing Cash Proceeds, the “Cash Boot Purge”). Distributing may use some of the Initial Cash Proceeds and Post-Closing Cash Proceeds to repurchase Specified Distributing Debt, including principal, interest and associated premiums and fees. All of the Initial Cash Proceeds and the Post-Closing Cash Proceeds will be used as described in the preceding two sentences.

- (viii) After the closing of the Combination, (i) either Distributing or Controlled may make a cash payment to the other party in respect of the difference between the amount of working capital in Controlled as of the Distribution and a specified target working capital amount (the “Working Capital Adjustment”), (ii) Controlled will make one or more payments to Distributing in an amount equal to the amount of cash in Controlled and its subsidiaries (the “Cash Adjustment”), and (iii) Controlled will make a payment to Distributing in an amount equal to the costs incurred by Controlled but funded by Distributing in issuing the Controlled Debt (the “Financing Obligations Adjustment,” each of the Financing Obligations Adjustment, the Working Capital Adjustment and the Cash Adjustment, a “Post-Closing Payment” and the proceeds from the Post-Closing Payments, the “Post-Closing Cash Proceeds”). The Working Capital Adjustment and the Cash Adjustment will be made, if at all, within e months after closing, unless, in the case of the Cash Adjustment, the amount of the Cash Adjustment exceeds a specified amount, in which case Controlled will pay the specified amount to Distributing in respect of the Cash Adjustment, and Distributing and Controlled will cooperate for f months to allow Distributing to recover an amount of cash equal to the remaining amount of the Cash Adjustment in a tax-efficient manner.

After the Combination, Distributing shareholders who received Controlled common stock in the Distribution will own approximately g% of the common stock of Controlled, and former Corporation X shareholders will own approximately h% of the common stock of Controlled.

Following the closing of the Combination, Controlled may carry out share repurchases in order to optimize the capital structure of Controlled (“Post-Closing Controlled Share Repurchases”). Corporation X has historically engaged in share repurchases for this purpose, as well as to return capital to shareholders, and Controlled expects to engage in share repurchases for the same purposes once it achieves certain third-party leverage targets after closing. A Post-Closing Controlled Share Repurchase may be carried out via open market repurchases or through one or more Controlled Accelerated Share Repurchase Programs. Any Post-Closing Controlled Share Repurchase would be made with respect to shares that will be purchased on the open market (or, in a Controlled Accelerated Share Repurchase Program, that will be acquired by the counterparty bank (“Counterparty”) on the open market) and such share repurchase will not be motivated by a desire to increase or

decrease the ownership percentage of any particular shareholder or group of shareholders. Furthermore, it is anticipated that Controlled will not have any “controlling shareholders” within the meaning of Treasury Regulation § 1.355-7(h)(3) after the Combination.

## **REPRESENTATIONS**

Except with respect to the information submitted in connection with the supplemental ruling request and the representations modified below, Distributing and Controlled reaffirm all of the material information submitted in connection with, and each representation contained in, the Prior Ruling Letter.

### **Rev. Proc. 2017-52**

Distributing makes the following modified representation with respect to the representations in section 3 of the Appendix to Revenue Procedure 2017-52:

1. Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the Distribution will be for fair market value based on arm’s-length terms, except for payments contemplated by certain Continuing Arrangements made no more than i months after the Distribution (it being understood that for purposes of this representation, negotiated arrangements between Distributing and Controlled that are priced on a “cost plus” basis are being treated as priced at fair market value).

### **Rev. Proc. 2018-53**

Distributing makes the following modified representations with respect to the representations in section 3 of Revenue Procedure 2018-53:

2. Representation 4: Other than the Specified Distributing Debt, Distributing incurred the Distributing Debt that will be assumed or satisfied (i) (A) before November 14, 2018, the date of the letter requesting the Prior Ruling Letter, and (B) no later than 60 days before the earliest of the following dates: (x) the date of the first public announcement (as defined in Treas. Reg. § 1.355-7(h)(10)) of the Separation or a similar transaction, (y) the date of the entry by Distributing into a binding agreement to engage in the Separation or a similar transaction, and (z) the date of approval of the Separation or a similar transaction by the Distributing board of directors, or (ii) on a date later than any such date described in clause (i) and the proceeds of such Distributing Debt were used to repay Distributing Debt incurred prior to the relevant date described in clause (i) (“Distributing Refinancing Debt”) or were used to repay or refinance (including through successive refinancings) Distributing Refinancing Debt.

3. Representation 6: There are one or more substantial business reasons for any delay in satisfying Distributing Debt with the Post-Closing Cash Proceeds beyond 30 days after the date of the Distribution. The Post-Closing Cash Proceeds will be deposited into a segregated bank account and will be used solely as described in Step (vii) above, in each case, within 30 days of their receipt by Distributing.

Additionally, Distributing and Controlled make the following representations with respect to the Post-Closing Controlled Share Repurchases:

4. Any Post-Closing Controlled Share Repurchase will have a sufficient business purpose.
5. For any Post-Closing Controlled Share Repurchase, the stock to be purchased by Controlled, or acquired by a Counterparty pursuant to a Controlled Accelerated Share Repurchase Program, will have been widely held.
6. Any acquisition of Controlled shares in a Post-Closing Controlled Share Repurchase by Controlled, other than through a Controlled Accelerated Share Repurchase Program, will be made in the open market or, with respect to a Post-Closing Controlled Share Repurchase effected through a Controlled Accelerated Share Repurchase Program, will be made from a Counterparty which will subsequently purchase Controlled shares on the open market.
7. There is no plan or intention that the aggregate amount of stock purchased or acquired through Post-Closing Controlled Share Repurchases will equal or exceed 20 percent of the outstanding stock of Controlled.

### **RULINGS**

Based on the information submitted and representations set forth above and submitted in connection with the Prior Ruling Letter:

- (i) The Post-Closing Payments will be treated as occurring immediately prior to the Distribution and, in the case of any Post-Closing Cash Proceeds received by Distributing from Controlled, will constitute "other property or money" described in section 361(b).
- (ii) Each Pension Plan will be treated as a creditor of Distributing to the extent of the Pension Plan Amount with respect to that Pension Plan for purposes of section 361(b)(3).
- (iii) Rulings 2 and 4 in the Prior Ruling Letter are hereby modified to read as follows:
  2. Other than with respect to any use of the Cash Proceeds to repay or repurchase Specified Distributing Debt, as to which no ruling is being issued, Distributing will recognize no gain or loss (i) on its receipt of the Controlled Stock,



the Cash Proceeds, and the Post-Closing Cash Proceeds; or (ii) the assumption by Controlled of any liabilities of Distributing in connection with the Contribution. Sections 361(a), 361(b) and 357(a).

4. Except to the extent that Distributing recognizes gain with respect to any use of the Cash Proceeds to repay or repurchase Specified Distributing Debt, as to which no ruling is being issued, the basis of Controlled in each asset received from Distributing in the Contribution will equal the basis of the asset in the hands of Distributing immediately before the Contribution. Section 362(b).
- (iv) For purposes of testing the effect of any Post-Closing Controlled Share Repurchase made by Controlled under section 355(e), a Post-Closing Controlled Share Repurchase will be treated as being made from all public shareholders of Controlled common stock (other than any “controlling shareholder” or “ten-percent shareholder” within the meaning of Treas. Reg. § 1.355-7(h)(3) and (14)) on a *pro rata* basis.
  - (v) The Post-Closing Controlled Share Repurchases will not constitute “evidence of device” within the meaning of Treas. Reg. § 1.355-2(d)(1).
  - (vi) Except to the extent provided or reserved in the additional and modified rulings above, the supplemental facts and changes to the proposed transaction described above will have no adverse impact on the Prior Ruling Letter, which, as supplemented and modified by these rulings, will remain in full force and effect.

### **CAVEATS**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transactions under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transactions that is not specifically addressed by this letter. No opinion is expressed or implied concerning the application of section 361(b) to Distributing’s receipt of the Initial Cash Proceeds and the Post-Closing Cash Proceeds to the extent they are used to repay or repurchase any of the Specified Distributing Debt, and no opinion is expressed or implied concerning any collateral effect on Controlled’s basis under section 362(b) in assets received from Distributing due to such repayment or repurchase.

### **PROCEDURAL STATEMENTS**

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the federal income tax return of each party involved in the Proposed Transactions for the taxable year(s) in which the Proposed Transactions are completed. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

J.P. Stemwedel  
Assistant to the Branch Chief (Branch 4)  
Office of Associate Chief Counsel (Corporate)

cc: